

UNITED STATES DISTRICT COURT		District Puerto Rico.
Name of Movant Heriberto Guadalupe-Mercado	Prisoner No. 20234-069	Case No. CR.00-0048-07
Place of Confinement		

UNITED STATES OF AMERICA

V.

Heriberto Guadalupe-Mercado.  
(name under which convicted)

MOTION

1. Name and location of court which entered the judgment of conviction under attack United States District Court- District of Puerto Rico.
2. Date of judgment of conviction April 5th, 2001.
3. Length of sentence 144 months.
4. Nature of offense involved (all counts) 21 U.S.C.846 & 18 U.S.C.1956(h)  
Conspiracy to distribute narcotics, Conspiracy to launder monetary instruments.

5. What was your plea? (Check one)

- (a) Not guilty ☐  
(b) Guilty ☒  
(c) Nolo contendere ☐

If you entered a guilty plea to one count or indictment, and not a guilty plea to another count or indictment, give details:

N/A

N/A

N/A

6. If you pleaded not guilty, what kind of trial did you have? (Check one)

- (a) Jury ☐  
(b) Judge only ☐

7. Did you testify at the trial?

Yes ☐ No ☐

8. Did you appeal from the judgment of conviction?

Yes ☒ No ☐

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9. If you did appeal, answer the following:

- (a) Name of court United States Court of Appeals, 1st Circuit.
- (b) Result Attorney filed an Anders Brief.
- (c) Date of result February 27, 2003.

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any federal court?

Yes ☐ No ☒

11. If your answer to 10 was "yes," give the following information:

- (a) (1) Name of court N/A
- (2) Nature of proceeding N/A
- N/A
- (3) Grounds raised N/A
- N/A
- N/A
- N/A
- N/A

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☐

- (5) Result N/A
- (6) Date of result N/A

(b) As to any second petition, application or motion give the same information:

- (1) Name of court N/A
- (2) Nature of proceeding N/A
- N/A
- (3) Grounds raised N/A
- N/A
- N/A
- N/A
- N/A

(4) Did you receive an evidentiary hearing on your petition, application or motion?  
 Yes ☐ No ☒

(5) Result N/A

(6) Date of result N/A

(c) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☐ No ☒

(2) Second petition, etc. Yes ☐ No ☒

(d) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

N/A

N/A

N/A

N/A

N/A

N/A

12. State *concisely* every ground on which you claim that you are being held in violation of the constitution, laws or treaties of the United States. Summarize *briefly* the *facts* supporting each ground. If necessary, you may attach pages stating additional grounds and *facts* supporting the same.

Caution: If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of the grounds.

(a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.

(b) Conviction obtained by use of coerced confession.

- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (h) Denial of right of appeal.

A. Ground one: The enhancement imposed by the Court violated

Petitioner's sixth Amendment Right.

Supporting FACTS (state *briefly* without citing cases or law)

Petitioner pled guilty pursuant to Rule 11(e)(1)(c) of the FRCP.

The Court erroneously applied a two(2) level enhancement pursuant

to guideline 2D1.1(b)(1) and a two (2) level supervisory role

enhancement pursuant to guideline 3B1.1(c). These specific offense

characteristic was not charged in petitioners indictment or plead to.

B. Ground two: Sixth Amendment Right to Effective Assistance of counsel:

Supporting FACTS (state *briefly* without citing cases or law) The grounds in support of  
this motion is that both trial and Appellate counsels were deficient  
in not raising the issue that the Court did not make individualized  
findings of drug quantity that were reasonably foreseeable to  
petitioner, thereby violating petitioner's 6th Amendment to effective  
assistance of counsel.

C. Ground three:

Supporting FACTS (state *briefly* without citing cases or law)

D. Ground four: \_\_\_\_\_ N/A

\_\_\_\_\_ N/A

Supporting FACTS (state *briefly* without citing cases or law) \_\_\_\_\_ N/A

\_\_\_\_\_ N/A

\_\_\_\_\_ N/A

\_\_\_\_\_ N/A

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state *briefly* what grounds were not so presented, and give your reasons for not presenting them: \_\_\_\_\_

After petitioner got sentenced, attorney never communicated with  
petitioner, as to what issues should be raised in direct appeal.

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?

Yes ☐

No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of judgment attacked herein:

(a) At preliminary hearing Robert Millan, Esq.

(b) At arraignment and plea Same as above.

(c) At trial Same as above.

(d) At sentencing Same as above.

(e) On appeal Isabel Abislaiman, Esq. P.O.Box 9023303, San Juan, PR 00902-3303

(f) In any post-conviction proceeding N/A

(g) On appeal from any adverse ruling in a post-conviction proceeding N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future: \_\_\_\_\_

N/A

(b) Give date and length of the above sentence: \_\_\_\_\_

N/A

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☐

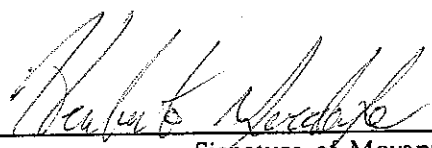
Wherefore, movant prays that the Court grant petitioner relief to which he or she may be entitled in this proceeding.

\_\_\_\_\_  
Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

JUNE 23, 2005.

(Date)

  
\_\_\_\_\_  
Signature of Movant